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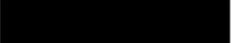
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: WASHINGTON DISTRICT

Date:

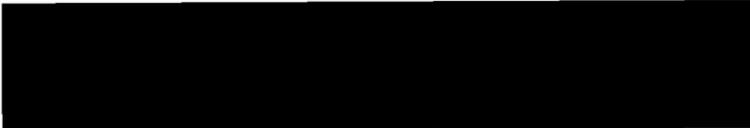
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IN RE:



APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Pakistan, and that his adjustment would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on May 13, 2008 advising of its recommendation that the applicant's request to adjust status be denied. *Decision of Field Office Director*, dated July 29, 2008.

On appeal, counsel for the applicant asserts that the field office director's decision is in error. Counsel asserts that the applicant worked for the ambassador of Pakistan to the United Nations who was engaged in diplomacy and that the applicant's duties were supportive of the ambassador and his diplomatic duties, and thus, the applicant's duties were semi-diplomatic duties. Counsel notes that when the applicant was assigned to the Pakistan Mission in Norway, he was designated as being in charge of administrative affairs several times in the absence of the Head of the Mission. Counsel further asserts that the applicant's children lack sufficient skills in their native Urdu to function in Pakistani society and that they have assimilated in the United States. Counsel also notes that the applicant failed to report for duty in Pakistan after the termination of his tour in the United States and was subsequently dismissed. Counsel indicates that the applicant is unsure how the government of Pakistan will treat him when he returns to Pakistan because of his failure to obey his government's order. Counsel contends that these factors present compelling reasons showing why the applicant and his family are unable to return to Pakistan. Counsel also asserts that adjustment of the applicant's status would be in the national best interest.

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

(a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the [Department of Homeland Security] for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the [Department of Homeland Security] that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family

and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the [Department of Homeland Security], in its discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made. 8 U.S.C. § 1255b(b).

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 is limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under Section 13.

The AAO now turns to a review of the evidence of record, including the information submitted on appeal. In making a determination of statutory eligibility, U.S. Citizenship and Immigration Services (USCIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

A review of the record shows that the applicant was last admitted in G-1 status on March 22, 1999 for employment as a stenographer at the Pakistan Mission to the United Nations in New York. The applicant's tenure with the Pakistan Mission to the United Nations began in December 1997 and continued until December 2001. *See Sworn Statement of* [REDACTED], dated September 26, 2006; *See Statement of* [REDACTED], dated April 14, 2006. The applicant applied for adjustment of status on May 10, 2006.

In the applicant's sworn statement, dated September 26, 2006, the applicant declared that his official title was stenographer and that his specific duty was "to dictate from the representative to the United Nations." Counsel, at the applicant's September 26, 2006 interview, referenced a letter explaining the applicant's position and title and notes that the letter does not go into much detail. However, the record in this matter only includes a letter, dated December 31, 2001, on the letterhead of the Pakistan Mission in New York indicating that the applicant, "Stenographer, was relieved of his duties in the Permanent Mission of Pakistan to the United Nations New York with effect from the afternoon of 29th December 2001." The letter also indicates that the applicant was accorded six months of extraordinary leave. On appeal, the applicant provides a supplemental affidavit, dated September 3, 2008. The applicant references his posting to Norway from 1991 to 1995 and declares that he had been designated in charge of the current administrative affairs of the mission several times by his government in the absence of the Head of the Mission. The applicant further declares that the "charter of [his] duties was similar to any member of the administrative and technical staff in diplomatic missions all over the world whose

functions are semi-diplomatic.” Also on appeal, as noted above, counsel for the applicant asserts that as the applicant’s duties were supportive of the ambassador and the ambassador’s diplomatic duties, the applicant’s duties were semi-diplomatic in nature.

Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act and no longer maintained that status at the time he filed for adjustment of status, the field office director found that the applicant’s duties as a stenographer were clerical and not diplomatic or semi-diplomatic. The AAO observes that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. The AAO also acknowledges that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. The AAO finds, however, that the essential role of a diplomat is the representation of a country in its relations with other countries. *See American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black’s Law Dictionary, 8th Edition, 2004* (Diplomacy: The art and practice of conducting negotiations between national governments). The inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those who did not engage in overt negotiation or representation, but who performed duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties were merely custodial, clerical or menial.

Counsel’s assertion that the applicant’s duties were supportive of the ambassador and the ambassador’s diplomatic duties is not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the applicant was admitted under section 101(a)(15)(G)(i) of the Act, the applicant has failed to provide a description of the duties he performed for the ambassador. The applicant’s title of stenographer and his brief job description that he was “to dictate from the representative to the United Nations,” do not provide sufficient information to enable either the field office director or the AAO to determine the extent of his duties and in what capacity the applicant “supported” the ambassador and his diplomatic mission. Without the necessary detail describing the applicant’s actual responsibilities and duties, the AAO is unable to conclude that the applicant’s duties were semi-diplomatic duties rather than clerical duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also finds that the applicant’s previous posting in Norway and any duties that he may have performed in that position are not relevant when analyzing the applicant’s position in the United States. The AAO observes that the applicant does not indicate that he performed duties similar to those performed while at the Norway post during his tenure in the United States. Upon review of the totality of the record in this matter, the applicant has not provided sufficient evidence to establish that his actual duties and responsibilities were diplomatic or semi-diplomatic in nature.

The AAO also concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent his return to Pakistan. The legislative history for Section 13 reveals that the provision was intended to provide adjustment of status for a "limited class of . . . worthy persons . . . left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "in some cases . . . wiped out" their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase "compelling reasons" was added to Section 13 in 1981 after Congress "considered 74 such cases and rejected all but 4 of them for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H. R. Rep. 97-264 at 33 (October 2, 1981).

In the applicant's April 14, 2006 statement appended to the application, the applicant noted that his children were born and brought up abroad and studied in English medium schools and did not learn their native tongue because it was not an option in the schools they attended. The applicant indicated that his children were alarmed at the prospect of returning to Pakistan as their values, lifestyle and careers would be jeopardized. The applicant stated that he made the decision to abandon his career with the Foreign Service of Pakistan and to forego his service benefits in the interest of the continued education, career, and future prospects of his children in the United States. The applicant noted further that he could not fund his children's stay and education in the United States with the income he would earn in Pakistan.

In the applicant's September 26, 2006 sworn statement, he declared that his prime reason for being unable to return to Pakistan is the education of his children. When asked if he or any member of his family would be persecuted if returned to Pakistan, the applicant declared that since his children had lived in the United States a long time, they would not know anything about Pakistan. On appeal, the applicant provides an additional affidavit in which he indicates that his son, [REDACTED], was injured in a hit and run accident in August 1998 and suffered chronic brain trauma and needed constant medical treatment and observation. The applicant explains that he requested leave from the Pakistani government and his request was denied and he was told to return to Pakistan. The applicant notes that he was willing to comply but that the government of Pakistan issued a one-page emergency passport to him, rather than an official passport and he refused to travel on the emergency passport with his son in his medical condition. The applicant declares further that he obtained an ordinary passport and advised the Pakistan government that he would return once he recovered from knee surgery but that he was served with an order to show cause notice followed by a dismissal notice. The applicant indicates that he has nothing to return to in Pakistan because he was dismissed by the Pakistan Foreign Service and he is afraid that he could face persecution upon returning to Pakistan. The applicant further declares that his son still needs to visit the neurologist at certain times and that Pakistan lacks the facilities his son would need such as an MRI.

The AAO acknowledges the difficulty the applicant's children might have in adjusting to life in Pakistan if returned there. However, this is not a compelling reason under Section 13. As noted above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which

accredited them. Section 13 requires that an applicant for adjustment of status under this provision have “compelling reasons demonstrating that the alien is *unable* to return to the country represented by the government which accredited the” applicant. (Emphasis added). The term “compelling” must be read in conjunction with the term “unable” to correctly interpret the meaning of the words in context. Thus, reasons that are compelling are those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred from the applicant’s perspective.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term “unable” is “lacking the necessary power, authority, or means.” Thus, the “compelling reasons” standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is interesting or attractive to them to remain in the United States rather than return to their respective countries. What Section 13 requires, however, is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the applicant. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine “whether there is ‘clearly expressed legislative intention’ contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

Again, the AAO acknowledges the difficulty the applicant and his children might face in regards to education and assimilation if they return to Pakistan. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The AAO has also considered the medical condition of the applicant’s son; however, the applicant has not provided any supporting evidence that his son still requires medical treatment. Moreover, the applicant has not provided evidence that his son would be unable to receive medical treatment, if needed, in Pakistan. The AAO has also considered the applicant’s claim that since his dismissal from the Pakistan Foreign Service he has nothing to return to in Pakistan and the applicant’s apprehension regarding persecution if he returns to Pakistan. The applicant, however, has not provided any evidence to support a fear of persecution if returned to Pakistan. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. It is also noted that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant’s return to Pakistan. See Interagency Record of Request (Form I-566). The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Pakistan or other political entity there as required under Section 13. The AAO finds that the applicant has not submitted evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason. The AAO therefore concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent the applicant’s return or that of an

immediate family member to Pakistan. As the applicant has failed to demonstrate that there are compelling reasons preventing his return and those of his immediate family members to Pakistan, the question of whether adjustment of status would be in the national interest need not be addressed.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that he was entrusted with duties of a diplomatic or semi-diplomatic nature and that there are compelling reasons preventing his return to Pakistan. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he or she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.